

November 16, 2000

M-01-04

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Jacob J. Lew
Director
Office of Management and Budget

Aida Alvarez
Administrator
U. S. Small Business Administration

SUBJECT: Executive Order on Increasing Opportunities and Access for
Disadvantaged Businesses

On October 6, 2000, the President signed an Executive Order, *Increasing Opportunities and Access for Disadvantaged Businesses* (attached). The Order directs Executive departments and agencies to take affirmative steps to increase purchases from disadvantaged businesses. These consist of Small Disadvantaged Businesses (SDBs), participants in the U.S. Small Business Administration's (SBA) section 8(a) Business Development program, and Minority Business Enterprises (MBEs).

Section 2 requires the head of each department and agency to designate a senior official, where appropriate, at the Deputy Secretary level or equivalent, to be responsible for implementing the terms of the Order. This section also includes specific actions that agencies must take to increase access and contract opportunities for disadvantaged businesses. To implement the requirements of Section 2(a), each department and agency with procurement authority must develop a long-term comprehensive plan and submit the plan to the Director of the Office of Management and Budget (OMB) within 90 days.

The plan must identify actions that your agency will take over the long term. Accordingly, you should submit a plan covering the next three years that implements each provision of Section 2(a), including milestones for accomplishing each action. You should also include steps that your agency will take to comply with Sections 4 and 5 which are designed to increase participation of disadvantaged businesses in contracts for Federal advertising and information technology. You should submit your plan to the OMB Director by January 6, 2001.

The Order gives SBA responsibility for monitoring and evaluating the progress of each agency in complying with their plan. SBA will evaluate annual reports submitted by each department and agency and submit its evaluations to OMB. SBA also will conduct semi-annual evaluations of the progress made by individual agencies in achieving their goals for contracting and subcontracting with disadvantaged businesses and publish the results of its findings.

We will work together to develop further guidance to implement the Order. If you have questions or need more information regarding your long-term comprehensive plan, please contact Kenneth Oscar, Deputy Administrator (Acting), Office of Federal Procurement Policy, at 202-395-5802. If you have questions or need more information regarding SBA's roles or responsibilities, please contact Kerry Kirkland, Acting Associate Deputy Administrator, Office of Government Contracting and Business Development, at 202-205-6459. Please send the name, e-mail address, and telephone number of your agency's contact within a week to Mike Gerich at mgerich@omb.eop.gov.

Attachment

Presidential Documents

Title 3—**Executive Order 13170 of October 6, 2000****The President****Increasing Opportunities and Access for Disadvantaged Businesses**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq.*), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note), the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), Executive Order 11625, and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the executive branch to ensure non-discrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

Sec. 2. Responsibilities of Executive Departments and Agencies with Procurement Authority. The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d)) and other related laws. In particular, they shall

ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act. These goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

Sec. 3. Responsibilities of the Small Business Administration. The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;

(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

Sec. 4. *Federal Advertising.* Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

Sec. 5. *Information Technology.* Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

Sec. 6. *General Services Administration Schedules.* The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Multiple Award Schedule to count those orders toward their 8(a) procurement goals.

Sec. 7. *Bundling Contracts.* To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

Sec. 8. *Awards Program.* The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

Sec. 9. *Applicability.* Independent agencies are requested to comply with the provisions of this order.

Sec. 10. *Administration, Enforcement, and Judicial Review.*

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

A handwritten signature in black ink, reading "William J. Clinton". The signature is written in a cursive style with a large, stylized "W" and "C".

THE WHITE HOUSE,
October 6, 2000.

[FR Doc. 00-26446

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